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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,593	05/19/1999	DALE C. TONOGAI	M-7547-US	5429

34036 7590 05/07/2003

SILICON VALLEY PATENT GROUP LLP  
2350 MISSION COLLEGE BOULEVARD  
SUITE 360  
SANTA CLARA, CA 95054

EXAMINER
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VANDERPUYE, KENNETH N

ART UNIT	PAPER NUMBER
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2661

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DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/314,593

Applicant(s)

TONOGAI, DALE C.

Examiner

Kenneth N Vanderpuye

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,10-14 and 16-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,14,16,20-22 and 24-33 is/are allowed.
- 6) ☒ Claim(s) 1-5,10-13,17-19,23,34-38,54-56,58-63 and 66-73 is/are rejected.
- 7) ☒ Claim(s) 39-53,57,64 and 65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-5, 10-12, 17-19, 23, 69-73 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. According to the specification p. 8 lines 11-12, the information duration is the length of time needed to play out the information in real-time. Claim 1, 69 as amended lacks support in the specification.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 7-9, 34-35, 66-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claim 7 it is not clear how a response is made to a predetermined event(line 4), before the determining the occurrence of the predetermined event(line 8).

With regards to claims 34 it is not clear what is meant by "wherein system performance is performance as a whole of: a device that forms the packets; and a network that carries the packets." It is not clear what is meant by performance as a whole.

With regards to claim 35, it is not clear it meant by "represents a reduction." It is not clear what is being reduced(reduction in what).

With regards to claim 66 the use of the phrase "hereinafter" is vague and indefinite because it fails to limit the independent claim. You cannot limit a means by another means. It is not clear how means for forming a packet(paketizer) becomes a transmission means.

***Claim Rejections - 35 U.S.C. § 102***

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claim 69 is rejected under 35 U.S.C. 102(e) as being anticipated by Karasawa(6,333,950).

With regards to claim 69, Karasawa teaches a device comprising:  
means for forming a first packet containing information collected over a first length of time in real time(Fig. 1, data is variable length encoded and variable length packetized);  
and means, responsive to a predetermined event, for forming a second packet containing information collected over a second length of time. (Fig. 1, the length of the

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encoded data and variable length packets vary depending on the coding rate which is related to change in the level of redundancy in video or audio data).

***Claim Rejections - 35 U.S.C. § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17-19, 1-5, 10-13, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudo et al.(5,148,429) in view of Brent et al(5,315,591).

Claim 17 is rejected because Kudo teaches a device including:

a memory(Fig. 7@8) ✓

an information controller coupled to the memory for storing information in the memory(Fig. 7@7) ✓

a packet controller coupled to the memory for transmitting a plurality of packets stored in memory(Fig. 7@110). What Kudo fails to teach is the transmission of variable length packets. Brent teaches a processor(Fig. 2@9) for converting packets variable length frames. Brent does not teach how the variable length packets are generated i.e. a processor that uses information of a first duration as payload in each of the packet s prior to the occurrence of a predetermined event, and uses information of a second

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duration as payload after occurrence of the predetermined event. However a the terms information of first duration and second duration as payload refer to packets of variable length which is taught by Brent. The predetermined event that produces variable length packets is directly related to the amount of voice traffic and delay sensitivity of the network. Hence the predetermined event that causes one packet to be longer than the preceding packet will depend of the amount of voice data being packetized and the amount of the delay the network can tolerate. It would have been obvious to one of ordinary skill in the art to combine Brent with Kudo for the purpose of converting packets to frame relay format(variable length). The motivation being to enable transmission on frame relay networks.

Claim 18 is rejected for the same reasons as claim 17. The predetermined event that produces variable length packets is directly related to the amount of voice traffic and delay sensitivity of the network. Hence the predetermined event that causes one packet to be longer than the preceding packet will depend of the amount of voice data being packetized and the amount of the delay the network can tolerate.

Claim 19 is rejected the conversion of packet to frame relay achieves this limitation.

Claim 1 is rejected for the same reasons as claim 17, because the method claimed is achievable by the apparatus of claim 17.

Claim 2 is rejected because the packets are from a single generator(Brent Fig. 2)

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Claim 3 is rejected because it would have been obvious to one of ordinary skill in the art to use more than one source to generate information.(multiplex capability).

Claims 4-5 are rejected because the difference in the lengths of packets will depend on the volume of voice traffic and the delay requirements of the network.

Claim 10 is rejected for the same reasons as claim 17, 1 because first and second duration implies size.

Claim 11 is rejected because the use of UDP protocol to generate variable length packets is well known in the art. Hence official notice is taken that it would have been obvious to one of ordinary skill in the art to combine this well known art with Kudo in view of Brent for the purpose of using UDP protocol standard.

Claim 12 is rejected because Kudo digitizes the audio(part of encoding)

Claim 13 is rejected because Kudo teaches encoding subsequent to digitizing(Fig. 7@7).

Claim 63 is rejected for the same reasons as claim 17, although Kudo fails to teach snippets(data blocks), the arrangement of data in snippets is similar to packetizing blocks of data which is obvious as a matter of design choice.

9. Claims 36-38, 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karasawa(6,333,950).



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Claim 36 is rejected for the same reasons as claim 69, because the arrangement of data in snippets is similar to packetizing blocks of data which is obvious as a matter of design choice.

Claims 37-38 is rejected because Karasawa teaches both a video stream and audio stream.

Claims 54-55 are rejected because the data in Karasawa is digital data. The arrangement of data in snippets is similar to packetizing blocks of data which is obvious as a matter of design choice.

Claim 56 is rejected because the packet are of variable size, hence snippets are selective since they are block of data. The arrangement of data in snippets is similar to packetizing blocks of data which is obvious as a matter of design choice.

***Allowable Subject Matter***

10. Claims 6, 14, 16, 20-22, 24-33 are allowed.

11. Claims 39-53, 57, 64-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Vanderpuye whose telephone number is (703) 308-7828. The examiner can normally be reached on M-F from 6:30am to 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms, can be reached on (703) -305-4703.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.



Kenneth Vanderpuye

May 5, 2003